IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

WP(C).No. 31150 of 2006(G)

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PETITIONER:

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K.R. VISWANATHAN NAIR,
S/O. RAMAKRISHNAN NAIR, AGED 65, PROPRIETOR,
SREEKALA METAL INDUSTRIES, KARIKODE,
THODUPUZHA EAST P.O., IDUKKI.

BY ADV. SRI.S.SREEKUMAR
SRI.P.K.SOYUZ
ADV. SHRI. P.MARTIN JOSE

RESPONDENTS:

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1. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, VYDHYUTHI BHAVAN,
PATTOM, TRIVANDRUM.

2. THE EXECUTIVE ENGINEER,
KERALA STATE ELECTRICITY BOARD, ELECTRICAL SECTION
THODUPUZHA.

3. ASSISTANT ENGINEER,
ELECTRICAL SECTION, NO.11,KERALA STATE ELECTRICITY
BOARD, THODUPUZHA.

BY ADV. SRI.JOSE J.MATHEIKEL, SC, KSEB
SRI.C.K.KARUNAKARAN, SC FOR KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) No. 31150/2006

**APPENDIX**

PETITIONER'S EXHIBITS

P1 : COPY OF THE REGISTRATION CERTIFICATE DATED 23/11/1987 ISSUED BY GOVT. OF KERALA.

P2 : COPY OF AGREEMNT DATED 22/11/1982.

P3 : COPY OF MINIMUM GUARANTEE AGREEMENT DATED 17/01/1989.

P4 : COPY OF REPRESENTATION DATED 21/02/2002.

P5 : COPY OF THE ORDER NO.DB 15/2001/2001/1131 DATED 30/03/2002.

P6 : COPY OF NOTICE DATED 28/03/2003 ISSUED BY 3RD RESPONDENT TO THE PETITIONER.

P7 : COPY OF THE APPEAL SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.

P8 : COPY OF JUDGMENT DATED 12/08/2004 IN WP(C) No. 13874/03.

P9 : COPY OF THE WRITTEN ARGUMENT NOTE SUBMITTED BY THE PETITIONER BEFORE THE SECRETARY OF THE 1ST RESPONDENT.

P10 : COPY OF ORDER DATED 08/11/2006 ISSUED BY KERALA STATE ELECTRICITY BOARD.

P11 : COPY OF NOTICE DATED 15/11/2006 ISSUED BY 3RD RESPONDENT TO THE PETIITONER.

RESPONDENT'S EXHIBITS

R2(a) : COPY OF THE MG AGREEMTN DATED 22/03/1995.

R2(b) : COPY OF AUDIT OBJECTION.

// TRUE COPY //

PA TO JUDGE.

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**C.N.RAMACHANDRAN NAIR, J.**

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**WP(C) No. 31150 of 2006**

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**Dated, this the 21st day of June, 2007**

**J U D G M E N T**

Heard learned counsel for the petitioner and the learned Standing Counsel for KSEB. The minimum guarantee payable by the petitioner was waived by the Executive Engineer on the ground that the area was covered by Rural Electrification Scheme. However, when CAG objected the waiver, demand is restored by the Board. Petitioner has challenged this before this Court and this Court vide Ext.P8 judgment directed the KSEB to decide the matter in their meeting. The Secretary of the Board heard the matter and placed the records before the Board and Board decided the issue vide Ext.P10. Strangely the Board has stated no reason for sustaining the demand. In other words, the Board just followed CAG's report and recommendations. This was certainly not the intention of the Court and this was not expected from the Board when the matter was remanded. In any case, learned Standing Counsel referred to CAG report, which shows that the Executive Engineer waived minimum guarantee in respect of some parties, just based on the report from Chief Project Manager, REC Ltd.

about the sanction, terms and conditions of loan for rural Electrification. Waiver can be granted only after rural electrification is carried out and the line turns to be remunerating for the Board. Sanctioning of loan for the scheme for rural electrification will not entitle for waiver of minimum guarantee. However, if waiver is granted after rural electrification is carried out, then the order of the Executive Engineer calls for no modification. Learned counsel for the petitioner submitted that waiver is granted only for the period after 30/03/2002 and by then rural electrification was over. This matter is not considered either by the Secretary of the Board or by the KSEB, which led to this round of litigation. Learned counsel for the KSEB submitted that petitioner has not paid even regular power charges after March 2003. There was no stay by this Court against recovery of current charges. Therefore it is up to the Board to recover the actual power charges with penal interest, if petitioner has not remitted the same. However, demand of balance minimum guarantee over the bill amount will remain stayed for another two months from now, within which time, the Secretary of the Board is directed to verify the rural electrification carried out in the area and grant exemption to the petitioner only after the line

turned remunerative. Petitioner should be given a hearing to furnish details of rural electrification project obtained from the Commissioner of Rural Electrification. In any case, even if minimum guarantee is sustained, no penal interest should be charged for the period after the grant of exemption by the Executive Engineer and until restoration of the demand if made by the Board.

This WP(C) is disposed of as above.

**(C.N.RAMACHANDRAN NAIR, JUDGE.)**

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